

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER BELOW POWDER RIVER - BASIN (42M)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Kelley Bean Co. Inc.

CASE 42M-6002 A-2023
42M 142769-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Kelley Bean Co. Inc. (Kelley Bean) is the record owner of industrial claim 42M 142769-00.

2. Kelley Bean filed a Motion to Amend Water Right Claim 42M 142769-00 on May 4, 2023 (Motion to Amend). (Doc.¹1.00). The Motion to Amend requested the following:

Amend legal description of Kelley Bean Co Inc. water right 42M 142769-00.

Current legal SESESE Section 16T12NR51E.

Please see attached QuitClaim Deed between BNSF and Kelley Bean, Exhibit A page 6 for updated legal description.

Please see attached DNRC Water Right Ownership Update provided by the BNSF narrative to Form 608.

Please see attached map showing sale area where water right is located.

A deed and DNRC ownership update form were attached to the Motion to Amend; a “narrative” was attached to the ownership update form. The Motion to Amend left some ambiguity as to whether the point of diversion *and* place of use were to be amended, as well as the intended legal land description.

3. A deadline was set for Kelley Bean to agree or disagree with the proposed point of diversion and place of use modifications. The proposed point of diversion and place of use modifications were based on information provided in Kelley Bean’s Motion to Amend.

4. On July 17, 2023, Kelley Bean filed a Statement, Exhibits, and the Declaration of Jeff Chapman, the Montana/Wyoming Regional Manager of Kelley Bean; Kelly has an office at the location described by claim 42M 142769-00. (Docs. 6.00 to 9.00).

5. In its July 17, 2023 Statement, Kelley Bean responded that it disagreed that the point of diversion and place of use should be modified to the SESESE of Section 16, as suggested by this Water Master in the Order Setting Filing Deadline:

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Counsel for Kelley Bean has reviewed the records for Claim 42M 142769-00 and has identified inaccuracies and a lack of clarity in Kelley Bean's May 4, 2023, Verified Motion to Amend Water Right Claim ("Motion to Amend"). Kelly Bean regrets the confusion caused by its earlier motion and seeks to correct it in this statement. This statement provides the Court with a correct proposed point of diversion and place of use for Claim 42M 142769-00 and respectfully requests the Court to amend the point of diversion and place of use for Claim 42M 142769-00 to reflect that both the point of diversion and the place of use of Claim 42M 142769-00 currently listed as the south half (S2) of Section 16 actually are in the northwest quarter of the southeast quarter (NWSE) of Section 16, as shown in Exhibit A.

6. Kelley Bean supported its Motion to Amend, as modified by the July 17, 2023 Statement, by providing a deed from BNSF Railway Company to Kelley Bean, conveying the property in the NWSE of Section 16. (Doc. 6.00). Additionally, BNSF submitted a Form 608 transferring claim 42M 142769-00 to Kelley Bean.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The proposed corrections to the point of diversion and place of use legal land descriptions of claim 42M 142769-00 do not have a reasonable potential to adversely affect other water users and therefore do not require further notice as provided for in Section 85-2-233(6), MCA. The changes do not constitute expansions of the elements of the claims, the changes are a reduction to claim 42M 142769-00.

RECOMMENDATION

1. The point of diversion and place of use for claim 42M 142769-00 should be modified as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSE S2	16	12N	51E	PRAIRIE

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kelley Bean Co. Inc
2407 Circle Dr.
Scottsbluff NE 69361-1791
(Last Order)

Service Via Electronic Mail:

Selena Z.Sauer
Justin Harkins
Crowley Fleck PLLP
P.O. Box 759
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Service List Updated: 07/24/2023

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, BELOW POWDER RIVER
BASIN 42M

Water Right Number: 42M 142769-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KELLEY BEAN CO INC
2407 CIRCLE DR
SCOTTSBLUFF, NE 69361 1791

Priority Date: DECEMBER 31, 1948

Type of Historical Right: USE

Purpose (use): INDUSTRIAL

Flow Rate: 7.20 GPM

Volume: 1.50 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSE	16	12N	51E	PRAIRIE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSE	16	12N	51E	PRAIRIE